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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th December 1952

No. 19/1/52-Elec. III.—WHEREAS the election of Shri Ranjit Singh of Village Dharampur, Tehsil Kandaghat and of Shri Lekh Ram of Nalagarh, as members of the Legislative Assembly of Patiala and East Punjab States Union from the Kandaghat Constituency of that Assembly has been called in question by three election petitions (Election Petitions Nos. 1, 15 and 59 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Roshan Lal of Patiala, Shri Gian Chand of Village Totu, Tehsil Kandaghat, District Kohistan and by Shri Banarsi Das of Nalagarh, respectively;

AND, WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of sections 86 and 87 of the said Act for the trial of the said petitions, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

(Election Petition concerning the Kandaghat Constituency, PEPSU Legislative Assembly.)

ELECTION PETITION No. 4 of 1952

1. Shri Gian Chand, son of Shri Joti Pershad, Village Totu, Tehsil Kandaghat, District Kohistan, PEPSU.—*Petitioner.*

Versus

1. Shri Sri Ram Bansal, Commission Agent, Kandaghat.
2. Shri Raghbir Singh, P.A. to Raja Nalagarh.
3. Shri Banarsi Dass, Pleader of Nalagarh.
4. Shri Lekh Ram, Shop-keeper of Nalagarh.
5. Shri Kishori Lal, Shop-keeper, Nalagarh.
6. Shri Muni Lal, of Village Hanech of Kandaghat Tehsil.
7. Shri Sada Nand, of Village Hinner of Kandaghat.
8. Shri Vijay Kumar, of Village Shagin of Kandaghat.
9. Shri Joseph, S. Khan of Subathu.
10. Shri Hanumant Dass of Kasauli.
11. Shri Shiv Dutt, of Village Totu, of Kandaghat.
12. Shri Roshan Lal, Deputy Minister, PEPSU.

13. Shri Nauratu Ram of Dagshai.
14. Shri Ranjit Singh, of Village Dharampore of Kandaghat.
15. Shri Biru Ram, Cart Road, Simla.
16. Shri Narain Dass, Subathu.
17. Shri Lachhman Dass, Nalagarh.
18. Shri Sarwan of Nalagarh.
19. Shrimati Shanti Devi of Kandaghat.
20. Shri Bhagat Singh, Nalagarh—*Respondents*.

BEFORE THE ELECTION TRIBUNAL, PATIALA

(*Election Petition concerning the Kandaghat Constituency, PEPSU Legislative Assembly.*)

ELECTION PETITION No. 5 OF 1952

Shri Roshan Lal, son of Shri Gancshu Ram, Deputy Minister, Patiala and East Punjab States Union, Patiala. *Petitioner.*

Versus

1. Shri Sri Ram Bansal, Commission Agent, Kandaghat.
2. Shri Raghbir Singh, P.A. to Raja Sahib of Nalagarh.
3. Mr. Benarsi Dass, Pleader of Nalagarh.
4. Shri Lekh Ram, Shop-keeper, Nalagarh.
5. Shri Kishori Lal, Shop-keeper of Nalagarh.
6. Shri Muni Lal, resident of Nahesh, Tehsil Kandaghat.
7. Shri Sada Nand, resident of Hinnar, Tehsil Kandaghat.
8. Shri Vijay Kumar, of Shagin, Tehsil Kandaghat.
9. Shri Joseph, S. Khan of Sabathu.
10. Shri Hanumant Dass of Kasauli.
11. Shri Shib Datt, of Totu, Tehsil Kandaghat.
12. Shri Gian Chand, son of L. Joti Pershad of Totu.
13. Shri Nauratu Ram of Dagshai.
14. Shri Ranjit Singh, member Advisory Committee Backward Class, Pepsu Government, resident of Dharampur.
15. Shri Biru Ram, caste Brahmin, Astrologer, Cart Road, Simla.
16. Shri Narain Dass Ghal by caste, resident of Sabathu.
17. Shri Lachhman Dass of Nalagarh.
18. Shri Sarwan of Nalagarh.
19. Shrimati Shanti Devi of Kandaghat.
20. Shri Bhagat Singh of Nalagarh.—*Respondents*.

BEFORE THE ELECTION TRIBUNAL, PATIALA

(*Election Petition concerning the Kandaghat Constituency, PEPSU Legislative Assembly.*)

ELECTION PETITION No. 6 OF 1952

1. Shri Benarsi Dass, son of Munshi Ram. Advocate, Nalagarh, P.O. and Tehsil, Nalagarh—*Petitioner.*

Versus

1. Shri Lekh Ram, Shop-keeper of Nalagarh.
2. Shri Ranjit Singh, son of Shri Mathroo, Koli, Village Satrool, Daharampur.
3. Shri Muni Lal, son of Mansa Ram, Village Shamleeh, Bagshai.
4. Shri Sada Nand, son of Kalloo, Village Hinnar.
5. Shri Vijay Kumar, son of Kanshi Ram, Village Shagin, Totu.
6. Shri Kishori Lal, son of Mansa Ram, Nalagarh.

7. Shri Gian Chand, son of Joti Pershad, of Totu, Kandaghat.
8. Shri Shiv Dutt, son of Dhani Ram, Village Dhando, Kandaghat.
9. Shri Raghbir Singh, son of Jiwa Nand, of Nalagarh.
10. Shri Joseph S. Khan, son of S. Khan, Subathu, Kandaghat.
11. Shri Hanwant Dass, son of Soml Mull, of Kasauli, Kandaghat.
12. Shri Siri Ram, son of Shadi Ram, of Kandaghat.
13. Shri Bhagat Singh, son of Chanda Singh, Shop-keeper, of Nalagarh.
14. Shri Narain Dass, son of Laturia, of Subathu, Kandaghat.
15. Shri Naratoo Ram, son of Marro Ram, of Dagshal, Kandaghat.
16. Shri Lachhman Dass, son of Santosh Dass, of Nalagarh.
17. Shri Sarwan, son of Harnam Dass, of Village Manpura, Nalagarh.
18. Shrimati Shanti, wife of Kakoo, of Village Mahi, Kandaghat.
19. Shri Biroo Ram, son of Mangal Singh, Village Sirinagar, Kandaghat.
20. Shri Roshan Lal, son of Ganesho Ram, Chamar, Deputy Minister, Pepsu, Patiala.—*Respondents.*

BEFORE THE ELECTION TRIBUNAL, PATIALA

Shri Gian Chand

Versus

Shri Siri Ram Bansal etc.

ELECTION PETITION No. 4 OF 1952

JUDGMENT

Two members—one of them belonging to a scheduled caste—were returned to the Pepsu Legislative Assembly from the Kandaghat Constituency. Three election petitions by three persons, namely, Shri Roshan Lal, Shri Gian Chand, and Shri Benarsi Dass have been filed to have the election declared void. Each of the petitioners was a candidate at the election, but in each case the nomination was rejected by the Returning Officer, and the ground taken in each of the petitions is that the nomination was improperly rejected and the result of the election, therefore, materially affected.

In defence, it is pleaded that, apart from the grounds mentioned by the Returning Officer, there were other grounds disqualifying the petitioners, and in view of such disqualifications, it is not possible to say that the nominations were improperly rejected, even if it be that the nominations could not have been rejected on the grounds taken by the Returning Officer. It is, thus, stated that Shri Roshan Lal was disqualified to seek election, as he happened to be holding the office of Deputy Minister at the time, and, further, that he had an interest in a contract for the performance of services, undertaken by the Pepsu Government, being the owner of a food grains depot in Sanawar. Similarly, it is said that Shri Gian Chand was with his father a member of the Grain Dealers' Association, Totu, and had, therefore, an interest in a contract for the performance of services, undertaken by the Government. About Shri Benarsi Dass, it is said that he and his son had a contract with the Forest Department, which was a contract for the supply of goods to the Government. The defence, thus, is that each of the petitioner was disqualified from membership and his nomination was, therefore, rightly rejected.

It was contended on behalf of the petitioners that the grounds of disqualifications, which were either not specifically raised or not considered by the Returning Officer, are not capable of being raised in the present proceedings, and we have merely to consider, whether the order of the Returning Officer is sustainable on the grounds mentioned by him. We have, however, come to the conclusion that fresh grounds of the kind mentioned in the present case can be urged, for if it is found that at the time of the nomination the petitioners were in fact not qualified to be chosen as members of the Legislative Assembly, it would be impossible for us to hold that their nominations were improperly rejected. This disposes of the 4th and the 5th issues respectively in the petitions of Shri Benarsi Dass and Shri Roshan Lal.

The only question now before us is whether the petitioner's nomination in each case was improperly rejected, and the result of the election materially affected thereby. It is convenient first to consider the grounds, on which the Returning Officer rejected the nominations.

To take up Shri Roshan Lal's case first, we find that he had filed eight nomination papers. Six of these (marked Exts. P/3 to P/8) were rejected on the ground that the name of the constituency was not written, as it is mentioned in the Delimitation of the Parliament and Assembly Constituencies (PEPSU) Order, 1951, Table (B), and the other two on the ground, that although the name of the election agent was mentioned, his particulars such as father's name and place of residence were not mentioned, and form 5-A mentioned in Rule 11-A of the Rules was not attached. On looking through the nomination papers we find that there is no substantial defect in any of them. The very first paper (Ext. P/1) seems to us perfectly in order. It was rejected on the ground that the particulars of the election agent were not mentioned. A glance at the paper, however, shows that Shri Roshan Lal had appointed himself as his election agent, and although above the printed word "myself" he had written "Roshan Lal" in ink, it is perfectly obvious that this Roshan Lal was himself and nobody else, and there was no point in mentioning his own father's name and place of residence etc. which particulars had already been mentioned in the beginning of the form. The Returning Officer appears to have thought that form 5-A under Rule 11-A of the Rules should have been attached, but that is necessary only in case of a person who names somebody other than himself as his election agent. Section 36 of the Representation of the People, Act, 1951, clearly lays down that a nomination paper must not be rejected for any technical defect, which is not substantial in character, and in view of this, it is surprising that the Returning Officer rejected this nomination paper on the flimsy ground mentioned by him.

We find no defect either in the six nomination papers, which were rejected on the ground of misdescription of the constituency. What appears to have happened is, that while mentioning the name of the constituency as "Kandaghat", Shri Roshan Lal added in brackets the word "reserved". It is perfectly true that the name of the constituency was merely Kandaghat, and the addition of the word "reserved" was not necessary, but there is no doubt whatever that this could cause no confusion of any kind, and the word "reserved" was apparently added to make it clear that Shri Roshan Lal was claiming the reserved seat on the ground of being a member of a scheduled caste. We are satisfied that there was no inaccuracy in the description of the constituency, and the Returning Officer ought not to have rejected these nomination papers on such a ground. We, therefore, find that the order of the Returning Officer rejecting the nomination of this candidate cannot be sustained.

Shri Gian Chand had filed five nomination papers. One of these one (marked Ext. P/2) was rejected on the ground that the year of the election was wrongly mentioned as "1951" while it should have been "1952". Another paper (Ext. P/4) was rejected on the ground that he had not appointed anybody as his election agent. The remaining three were rejected on the ground that the name of the constituency was mentioned as "Kandaghat" "(general)", while it should have been merely "Kandaghat", and also that in two papers the particulars of the election agent were not mentioned. We find that, apart from possibly one paper (Ext. P/4), in which the appointment of an election agent seems doubtful, because a line appears to have been drawn through the word "myself", also, the remaining papers suffer from no substantial defect. It is perfectly clear that Shri Gian Chand had appointed himself as his election agent, and there was, therefore, occasion for him to furnish further particulars of the election agent. The name of the constituency is stated with sufficient clearness, and the addition of the word "general" within brackets after the word "Kandaghat" can cause no confusion, but is on the contrary a clarification of a candidate's position that he was not claiming the reserved seat. We conclude, therefore, that Shri Gian Chand's nomination ought not to have been rejected on the grounds mentioned by the Returning Officer.

Shri Benarsi Dass filed only one nomination paper, and, so far as we can see, this was perfectly in order. This was rejected with the remark, "Name of the election agent has been given. Particulars such as father's name and place were not given. Form 5-A (Rule 11-A) not attached." A look at the paper (Ext. P/1) itself shows that Shri Benarsi Dass had appointed himself as his election agent, and the mere fact, that after the words "myself," which are printed on the form, he had added his name "Benarsi Dass", can make no difference. There was no question in this case about form 5-A, which is required only if somebody other than the candidate himself is appointed his election agent. In this case also, we hold that the nomination ought not to have been rejected on these grounds.

We now come to the most controversial part of the case. It is said that the petitioners were under a disability to stand for the Legislative Assembly, and their nominations were, therefore, properly rejected. The contention first is that Shri Roshan Lal held an office of profit under the Pepsu Government, being at that time a Deputy Minister, and he was, therefore, disqualified by virtue of Article 191 of the Constitution. The answer made to this objection is that the office of a Deputy Minister is of the same kind as the office of a Minister, and Article 191 of the Constitution itself exempts such an office from the disability, and, in the alternative, that the disqualification, if any, has been removed by the Pepsu Legislative Assembly (Prevention of Disqualification) Act, 2008.

It is admitted that the disqualification mentioned in Article 191 of the Constitution does not apply to a Minister, for the simple reason that a Minister has to be chosen from among the members of the Legislature. It is on general grounds difficult to believe that this exemption was not meant to cover the office of a Deputy Minister, which is a political appointment, and there is, therefore, in our opinion, considerable force in the suggestion that the expression "Minister" used in Article 191 of the Constitution was intended to cover the case of a Deputy Minister. We, however, prefer to base our decision on the other ground taken by the petitioner, and that is that the disqualification attaching to a Deputy Minister was actually removed by the Pepsu Legislative Assembly (Prevention of Disqualification) Act, 2008. This was enacted in April 1952, but the very first section of the Act says that "It shall be deemed to have come into force on the 1st day November, 1951." Section 2 then says:—

"A person shall not be disqualified for being chosen as, or for being, a member of the Legislative Assembly of the Patiala & East Punjab States Union by reason only of the fact that he holds any of the following offices of profit under the Government of the Patiala and East Punjab States Union, namely, an office of a Deputy Minister or a Parliamentary Secretary."

The meaning of the Act quite clearly is that as from 1st November 1951 a Deputy Minister shall not be disqualified from being chosen as a member of the Legislative Assembly. It was contended on behalf of the respondents that retrospective effect ought not to be given to this statute, because such retrospective effect would result in hardship. We are not impressed by this argument. The Act is plainly retrospective and quite clearly the main object of this Act was to ensure that a Deputy Minister should not be deemed to have been under any disability. We, have, therefore, to hold that Shri Roshan Lal was not disqualified to seek election to the Legislative Assembly at the time he filed his nomination.

The second objection, concerning this petitioner, is that he had a food grains depot in Sanawar. It is admitted that he had such a depot before the election. Immediately before then, however, he transferred that depot to his brother. It is contended that this transfer was only ostensible, and that actually he retained an interest in the depot. On the evidence called in the case, we may have been willing to agree that Shri Roshan Lal had retained an interest in the grain depot in question, but we find it unnecessary to come to any clear finding on this matter, because we find that the ownership of such a depot does not entail any disqualification mentioned in section 7 of the Representation of the People Act, 1951. Clause of this section, which is relied upon by the respondents, runs thus:—

"A person shall be disqualified for being chosen as or for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State,—

- (d) If whether by himself or by any person or body of persons in trust for him or for his benefit or on his own account he has any share or interest in a contract for the supply of goods to or for the execution of any works or the performance of any services undertaken by the appropriate Government."

The argument on behalf of the respondents is that under the scheme of rationing and procurement of food grains in Pepsu, the Government has undertaken the service of supplying food grains to the people in the rationed and deficit areas, and the holder of a food grains depot is under contract with the Government to perform those services on behalf of the Government. We are neither able to agree that the Pepsu Government has undertaken the so-called service of supplying food grains to the people, nor that the holder of a grain depot is under any contract with the Government to perform such a service on their behalf. As to the

first, it is clear that whatever arrangements have been made in connection with the rationing of food grains, or the procurement of food grains by the State, or the distribution of such food grains, it is done by virtue of the Essential Supplies (Temporary Powers) Act, 1946. That is an Act "to provide for the continuance during a limited period of powers to control the production, supply, and distribution of, and trade and commerce, in certain commodities," and there is no indication either in the Preamble of the Act, or in its provisions, that the Government was undertaking the task of supplying food grains to the people. All that the Act does is to authorize the imposition of certain restrictions in the matter of production, supply, and distribution of certain commodities. The exercise of such restrictions does not make the Government responsible for the supply of the commodities concerned. It was said that since under the various Orders made under this Act, the Pepsu Government has prohibited everybody, except the Government, from buying food grains from the producers in certain areas, and has similarly prohibited ordinary traders from dealing in such food grains, and has taken upon itself the task of equitably distributing the food grains in different areas, the Government is under an obligation to supply such food grains to the deficit areas. We believe that in advancing this argument learned counsel were thinking of some kind of moral obligation on the part of the Government to feed the people, but such moral obligation, if it exists, does so in spite of Act XXIV of 1946, and not because of it. We are not really concerned with the larger obligations of the Government but merely with the limited question whether the Pepsu Government has, in any sense, undertaken the task of supplying food grains to the people, and we are unable to find any evidence of it either in the Essential Supplies (Temporary Powers) Act, 1946, or in the Orders made under that Act. All that we find is that the Government has imposed certain restrictions on the free and open sale and distribution of food grains, which is a very different matter.

As to the second contention raised, that a grain depot-holder is under a contract with the Government for the supply of food grains to anybody on their behalf, there is even less foundation. The position, as we view it, is that nobody can sell food grains without a licence, and a depot-holder is merely given a licence or a permit by the Government to sell food grains. There is no question of any contract between him and the Government for the supply of food grains to anyone on Government's behalf. We do not think the position of a grain depot licensee is in any manner different from that of a licensee for the sale of liquor or arms. We are, thus, of the opinion that by running a food grain depot Shri Roshan Lal did not become a contractor for the performance of any services undertaken by the Pepsu Government, and we conclude that he was not disqualified under Section 7 of the Representation of the People Act.

During the trial, another matter was sought to be raised, although it had not been specifically mentioned earlier. It was said that Shri Roshan Lal had a contract with the Forest Department for the performance of certain services on behalf of the Government. We were very reluctant to go into this matter at the stage at which it was raised, but on counsel's insistence we agreed to look at the evidence, because Shri Roshan Lal admitted the facts when they were clearly stated. It appears that Shri Roshan Lal had for a period of one year bought from the Government their right of collecting royalty on the sale of wood from certain villagers for a consideration of Rs. 260 or so. We do not see how this can be called a contract for the performance of any services on behalf of Government. It was said that Shri Roshan Lal was collecting the royalty on behalf of the Government. Even that is not true, for he had paid the Government Rs. 260 for the purchase of Government's rights, and what he was subsequently collecting from the people was for himself. We have no doubt whatever that this kind of contract is not at all hit by the language of Clause (d) of Section 7 of the Act. We find, therefore, that Shri Roshan Lal was not in any manner disqualified to seek election to the Legislative Assembly, and his nomination was improperly rejected by the Returning Officer.

Regarding Shri Gian Chand, it appears that his father was a member of the Grain Dealers' Association, Totu, who in turn held a grain depot, and the suggestion is that Shri Gian Chand and his father were and are joint, and Shri Gian Chand has the same kind of interest both in the grain depot and the food grains association as his father. Assuming this to be so, we find that it is not possible to agree that the Grain Dealers' Association is under any contract for the performance of any services undertaken by the Government. We have already expressed our opinion concerning the position, which Government occupies in connection with the sale and distribution of food grains. It was contended in this connection that there is a regular contract or agreement between the association

and the Pepsu Government, and that it is in substance a contract for the performance of certain services. We have looked at the particular agreement concerning this case and also the general form of agreement required to be entered into by such associations in Pepsu, that is, Annexure IV to the scheme of procurement, 1951-52. All that the agreement really amounts to is this, that the association undertakes to purchase all the food grains arriving in a particular *mandi* at a price fixed by Government, and further to distribute and sell the food grains to such persons as Government may name and at fixed prices. There is no indication in the agreement that the association has agreed to supply food grains to any particular person; nor is there anything here to suggest that the Government have in their turn undertaken to supply food grains to the people of the State. We, therefore, find that such food grains associations are not hit by the definition in Clause (d) of Section 7 of the Representation of the People Act, 1951. We have already expressed our opinion about the position of a grain depot-holder. We would, therefore, hold that Shri Gian Chand was not disqualified to stand for the Legislative Assembly on account of any interest he may have had in the Grain Dealers' Association, Totu. It follows that his nomination could not have been rejected on any such ground, and the rejection was improper.

Regarding Shri Benarsi Dass, the case is that his son had taken the lease of a Government quarry for the extraction of stone, and in this contract he himself had a substantial interest. We assume the facts stated to be true, but we cannot see that this lease of a Government quarry amounts to a contract of the kind mentioned in Clause (d) of Section 7 of the Act. The contention on behalf of the respondents is that one of the terms of the contract provides that the lessee will supply stone etc. to Government, and for this reason the contract of lease became a contract for the supply of goods to Government. We have looked at the terms, and we find that the contract was merely a contract for quarrying stone and not for the supply of any goods to Government. One of the terms said to have been declared at the time of the auction was in these words:

"If the Pepsu Government requires any quantity of boulder, shingle, or sand, the contractor will not interfere in its supply and he will be paid current rate of the range."

It is this clause, which is particularly relied upon by the respondents, but properly understood the clause merely means that if Government happens to require any stone or sand, quarried by the contractor, he will not refuse to sell the same to Government, and he will, of course, be paid the current price. This is certainly not an agreement to supply any goods to Government. The transaction was merely a lease of a Government quarry for a certain period and this, in our opinion, is not covered by Clause (d) of Section 7 of the Act.

Reference was made to another contract, but this appears to have been merely a contract for the transport of certain goods for the Public Works Department, and it was admittedly completed long before the nominations were filed. No other disqualification is mentioned in connection with Shri Benarsi Dass, and we have, therefore, to hold that he was not in any manner disqualified, and the rejection of his nomination was, therefore, improper.

To sum up, our conclusion is that the nominations of all the three petitioners were improperly rejected. It was suggested on behalf of the respondents that this need not have affected the result of the election. We see no force in such a suggestion. We are perfectly clear in our mind that the improper rejection of a nomination must necessarily affect the result of the election in a material manner. We have expressed such an opinion, after very careful consideration, in the case of Shri Hans Raj V Shri Ram Singh Etc. (Election Petition No. 2 of 1952), decided on 15th November 1952, and learned counsel appearing in the present cases have not been able to shake us from that position. It is perfectly obvious that Shri Ranjit Singh respondent was returned to the Legislative Assembly largely because Shri Roshan Lal's nomination was rejected, there being no other candidate claiming the reserved seat, and but for such rejection both of them would have had to go to the polls, and it is now impossible to discover what the result might have been. Nor is it possible to say now what the result of the election would have been, had Shri Gian Chand and Shri Benarsi Dass been allowed to participate. We are perfectly satisfied that the rejection of the petitioners' nominations materially affected the result of the election, and, in consequence, we have to upset the election of both the members. We therefore, allow the three petitions and declare the election to the Pepsu Legislative Assembly from the Kandaghat Constituency wholly void.

Considering that none of the parties can be blamed, in any manner, for what has happened, we leave the parties to bear their own costs.

3rd December 1952.

ANNOUNCED.

(Sd.) S. S. DAULAT, I.C.S., *Chairman*,
Election Tribunal, Patiala.

(Sd.) DURGA PERSHAD NAIR, *Member*,
Election Tribunal, Patiala.

(Sd.) R. B. PARSHOTAM LAL, *Member*,
Election Tribunal, Patiala.

P. S. SUBRAMANIAN,
Officer on Special Duty.